

**BRIGHT FROM THE START:
GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING**

**APPEAL PROCEDURES
SUMMER FOOD SERVICE PROGRAM**

These appeal procedures are issued pursuant to 7 Code of Federal Regulations (CFR) Section 225.13 and Official Code of Georgia Annotated (O.C.G.A.) Section 50-13-1 *et seq.*

PURPOSE

The purpose of the appeal procedures is to provide sponsors or food service management companies the opportunity to appeal adverse actions pursuant to the Georgia Administrative Procedure Act.

DEFINITIONS

“Act” means the National School Lunch Act, as amended.

“Administrative law judge” means the independent and impartial review official that is employed or appointed by the Office of State Administrative Hearings.

“Adverse action” means a denial by the state agency of:

- a sponsor’s application for participation in the program;
- a sponsor’s request for an advance payment;
- a sponsor’s claim for reimbursement (except for late submission under 7 CFR Section 225.9(d)(6));
- a sponsor’s application for a site;
- a food service management company’s application for registration; and
- a request by a sponsor to forward to the U.S. Department of Agriculture an exception request for 1) payment of a late claim or 2) an upward adjustment to a claim.

“Adverse action” also means:

- a claim against a sponsor for remittance of a payment;
- the termination of a sponsor or site; and

- the revocation of a food service management company's registration.

“Appellant” means the sponsor or food service management company requesting an appeal of the state agency's adverse action.

“Camps” mean residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule or organized cultural or recreational programs for enrolled children between meal services.

“Food service management company” means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in 7 CFR Section 225.15. Food service management companies may be: (a) Public agencies or entities; (b) Private, nonprofit organizations; or (c) Private, for-profit companies.

“NYSP” means the National Youth Sports Program administered by the National Collegiate Athletic Association.

“Office of State Administrative Hearings” (OSAH) means the executive state agency responsible for the administration of the Georgia Administrative Procedure Act. OSAH is not accountable to the management of the Summer Food Service Program or the state agency.

“Program” means the Summer Food Service Program for Children.

“School food authority” means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food service management company registration and bid procedure requirements, “school food authority” also means any college or university which participates in the Program.

“Site” means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

“Sponsor” means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, a public or private nonprofit college or university currently participating in the NYSP, or a private nonprofit organization which develops a special summer or other school vacation program providing food service similar to that made available to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program.

“Sponsor” may also mean a public or private nonprofit college or university which participates in the NYSP during the months of October through April and is approved to participate in the Program. Sponsors are referred to in the Act as “service institutions.”

“State agency” means Bright from the Start: Georgia Department of Early Care and Learning (DECAL).

“USDA” means the United States Department of Agriculture.

POLICY

The Georgia Administrative Procedure Act, O.C.G.A. Section 50-13-1 et seq., governs the appeal procedures for sponsors and food service management companies.

Notices of adverse action shall be issued by the state agency in writing and shall state the type of action, the cause for the action, and if applicable, the financial effects. Notices shall also describe the sponsor or food service management company’s right to appeal the action and these procedures.

Sponsors or food service management companies that appeal an adverse action must request either a review of the record or a hearing. This request must be in writing and submitted to DECAL within ten (10) days following the day of receipt of the agency’s notice of adverse action. The request must identify the specific adverse action(s) the Appellant wishes to appeal and the reason(s) why the state’s decision should be overturned. Once received, DECAL will forward the request to OSAH for handling along with all pertinent written documentation that led to the action. DECAL will provide the Appellant with a copy of the documents it transmits to OSAH requesting a hearing on the Appellant’s behalf. With respect to the type of appeal being requested:

- If a sponsor or food service management company requests a review of the record, that entity is responsible for submitting all of the requisite written documentation to DECAL within the specified deadline. Thereafter, DECAL will forward this documentation to OSAH.
- If a sponsor or food service management company requests a hearing, any information on which DECAL based the adverse action shall be made available upon request to the Appellant for inspection. OSAH will schedule a hearing upon receipt of the request from DECAL and give adequate notice to the parties of the place, date, time and procedures of the hearing in accordance with the federal regulation 7 CFR 225.13(b). Hearings will be held in Atlanta, Georgia, at the offices of OSAH pursuant to the Rules and Regulations of the State of Georgia, Chapter 616-1-1, Rules of the Office of State Administrative Hearings.

Decisions of the Administrative Law Judge will be rendered in a timely manner in accordance with the federal regulation 7 CFR 225.13(b)(10).

The adverse action shall remain in effect during the appeal process. However, the Appellant may continue to operate under the Summer Food Service Program for Children during a termination, unless the termination is based on imminent danger to the health and welfare of the participants. Sponsors and food service management companies electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the state agency's action is upheld.

The Administrative Law Judge issues a Final Decision. The Appellant may seek judicial review of the Final Decision by filing a petition with either the Fulton County Superior Court or the superior court of the county of residence of the Appellant.

PROCEDURES

All appeal requests of adverse actions must be submitted in writing to the Legal Services Manager, DECAL, 2 Martin Luther King, Jr. Drive, SE, Suite 754, East Tower, Atlanta, Georgia 30334. Such written requests must be submitted or mailed (postmarked) to DECAL within ten (10) days following the day of receipt of the agency's notice of adverse action. The request must identify the specific adverse action(s) the Appellant wishes to appeal, the reason(s) why the state's decision should be overturned, and a photocopy of the notice detailing the adverse actions issued by DECAL. An Appellant must request either a review of the record or a hearing. DECAL will forward the appeal request to OSAH and provide the Appellant with a copy of this transmittal.

1. **Review of the Record:** An Appellant may submit written documentation refuting the adverse action. This documentation must be submitted to DECAL when filing the review request. To be considered, the Appellant must submit the written documentation within seven (7) days of submitting the review request. DECAL will then forward the documentation to OSAH. Documentation not received in a timely manner will not be considered unless the Administrative Law Judge presiding over the matter for OSAH determines that extraordinary circumstances prevented its timely submission.
2. **Hearing:** An Appellant may request a hearing that may be attended in person. At its own expense, Appellant may retain counsel to provide legal representation at the hearing, which will be scheduled by OSAH. Advance notice will be given by OSAH to the parties of the place, date, time, and procedures of the hearing in accordance with the federal regulations 7 CFR 225.13(b)(6). Hearings will be held in Atlanta, Georgia, at OSAH pursuant to the Rules and Regulations of the State of Georgia, Chapter 616-1-1, Rules of the Office of State Administrative Hearings.

After the hearing is held, the Administrative Law Judge will issue a ***Final Decision*** based on the documentation and evidence presented by the parties in accordance with federal regulations 7 CFR 225.13(b)(10) and (12).

Should the Appellant wish to appeal the Final Decision issued by OSAH, a petition for judicial review must be filed with either the Superior Court of Fulton County or the superior court of the county of the Appellant's residence within thirty (30) calendar days after service of the Final Decision.

If you have any questions concerning this policy, please direct them to the Legal Services Manager.

JAP/loh